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IN THE

Supreme Court of the United States

No. 71-637

JAMES F. HAIGHT, *et al.*,
Petitioners,

v.

SECURITIES AND EXCHANGE COMMISSION,
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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Petitioners James F. Haight, W. Lyles Carr, David M. Adam, Jr., James W. Harper, III, Burton Kitain, Homer E. Davis and Robert F. Kibler petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered against them in this proceeding on June 30, 1971.

This petition raises the same questions as the petition being filed contemporaneously in *A. Dana Hodgdon v. Securities and Exchange Commission,* which seeks review of the same judgment, and petitioners request that the two petitions be considered together.

OPINIONS BELOW

The Court of Appeals wrote no opinion; its judgment is set forth as Appendix A hereto. The Commission's Findings and Opinion and order are set forth as Appendix B to the *Hodgdon* petition.

JURISDICTION

The judgment of the court of appeals was entered on June 30, 1971, and a timely petition for rehearing was denied on August 12, 1971. This Court's jurisdiction rests upon 28 U.S.C. § 1254 (1).

QUESTIONS PRESENTED

Whether the Securities and Exchange Commission violated the due process clause and the Administrative Procedure Act and exceeded its statutory powers when it imposed the penal sanction of permanent disbarment from the securities business upon petitioners (1) on the basis of conduct that had not previously been declared a violation of law and (2) without revealing prior to the hearing the specific acts of fraud charged.

STATUTES INVOLVED

5 U. S. C. § 554 (b) provides:

> "Persons entitled to notice of an agency hearing shall be timely informed of–
>
> "(1) the time, place, and nature of the hearing;
>
> "(2) the legal authority and jurisdiction under which the hearing is to be held; and
>
> "(3) the matters of fact and law asserted."

Section 15 (b) (7) of The Securities Exchange Act of 1934 (as amended), 15 U.S.C. § 78o(b)(7), provides:

"The Commission may, after appropriate notice and opportunity for hearing, by order censure any person, or bar or suspend for a period not exceeding twelve months any person from being associated with a broker or dealer, if the Commission finds that such censure, barring, or suspension is in the public interest and that such person has committed or omitted any act or omission enumerated in clause (A), (D) or (E) of paragraph (5) of this subsection or has been convicted of any offense specified in clause (B) of said paragraph (5) within ten years of the commencement of the proceedings under this paragraph or is enjoined from any action, conduct or practice specified in clause (C) of said paragraph (5). It shall be unlawful for any person as to whom such an order barring or suspending him from being associated with a broker or dealer is in effect, willfully to become, or to be, associated with a broker or dealer, without the consent of the Commission, and it shall be unlawful for any broker or dealer to permit such a person to become, or remain, a person associated with him, without the consent of the Commission, if such broker or dealer knew, or in the exercise of reasonable care, should have known, of such order."

The pertinent portions of Section 15 (b) (5) of the Act, 15 U.S.C. § 78o (b) (5), referred to in the preceding subsection specify the following acts:

"(D) has willfully violated any provision of the Securities Act of 1933, or of the Investment Advisers Act of 1940, or of the Investment Company Act of 1940, or of this chapter, or of any rule or regulation under any of such statutes.

"(E) has willfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person of the Securities Act of 1933, or the Investment Advisers Act of 1940, or the Investment Company Act of 1940, or of this chapter, or of any rule or regulation under any of such statutes or has failed reasonably to supervise, with a

view to preventing violations of such statutes, rules, and regulations, another person who commits such a violation, if such other person is subject to his supervision. * * *."

STATEMENT

Petitioners are individuals who were subordinate officers or employees of the stock brokerage firm of which A. Dana Hodgdon was President during the period pertinent to this proceeding. Petitioners were co-respondents with Hodgdon in the SEC proceedings below and, with Hodgdon, were barred from the securities business for life on account of their allegedly fraudulent acts as Hodgdon's subordinates.

The facts relating to the SEC proceedings are set forth in the petition filed contemporaneously by Hodgdon, to which we respectfully refer the Court.

REASONS FOR GRANTING THE WRIT

The *Hodgdon* petition shows that the court of appeals' affirmance of the agency proceedings in which Hodgdon and these petitioners were permanently barred from the securities business raises important questions of federal law. These questions concern (1) the statutory and constitutional requirements that persons upon whom an agency proposes to impose such drastic punitive sanctions be given adequate notice of the charges against them, and (2) the statutory and constitutional limitations upon punishment for conduct not previously declared unlawful. As the *Hodgdon* petition shows, the ruling of the court below on the first of these questions conflicts not only with prior decisions of this Court, but more specifically with the decisions of two other courts of appeals in *Jaffee & Co. v. SEC*, 446 F.2d 387 (2 Cir. 1971), and in *Bendix Corp. v. FTC*, 1971 Trade Cas. ¶ 73,724 (6 Cir. 1971).

CONCLUSION

For the foregoing reasons and all of the reasons set forth in the contemporaneous *Hodgdon* petition, certiorari should be granted in both of these cases raising common challenges to the judgment below, and the cases should be consolidated.

Respectfully submitted,

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APPENDIX A

HAIGHT & CO., INC., *et al.*, *Petitioners,*	)	
v.	)	Nos. 23,244, 23,246 and 71-1136
SECURITIES AND EXCHANGE COMMISSION, *Respondent.*	)	

Petitions for Review of Orders of the Securities and Exchange Commission.

Before: WRIGHT, McGOWAN and ROBINSON, Circuit Judges.

JUDGMENT

These consolidated cases came on to be heard on the record on appeal from the Securities and Exchange Commission, and were argued by counsel. While the issues presented occasion no need for an opinion, they have been accorded full consideration by the court. *See* Local Rule 13 (c).

The record shows that the Commission has complied with the required procedures and that its findings are supported by substantial evidence. There being no legal error, it is ORDERED and ADJUDGED by this court that the orders of the Securities and Exchange Commission appealed from in these causes are hereby affirmed.

Per Curiam

Dated: June 30, 1971